

New Number One Discrimination Claim: Retaliation

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New statistics released by the Equal Employment Opportunity Commission (EEOC) show that in 2009, employees filed claims against employers based on what's called "retaliation" just as often as they filed based on pure discrimination claims. According to the EEOC, **36%** of claims filed against employers in 2009 were based on "retaliation" claims, tying race discrimination for the most popular type of employment discrimination claim. Those claims accounted for 33,613 of the 93,277 claims filed with the EEOC last year, and the number of these retaliation claims has been growing every year. In addition, retaliations claims can also be made under workman's compensation statutes.

This means that employers can be found liable under a discrimination statute even if they never discriminated against anyone, and even if an underlying discrimination claim is dismissed. Instead, the employee merely has to prove that an employer retaliated in some way because he or she participated in a discrimination claim or opposed their employer's allegedly discriminatory practice.

So, any employee who files a discrimination claim and is subsequently fired or disciplined merely has to prove that there is some connection between their firing or discipline and their participation in an employment claim or opposition to an allegedly discriminatory practice. Note that **the employee never has to prove that any discrimination occurred.**

Action Items: Preventing Retaliation Claims

1. Human nature can cause good managers to make bad decisions. Frustration or anger towards a problem employee can lead away from following proper termination procedures. Have a policy in place and stick to it.
2. Document, Document, Document. Accurate records will support the non-retaliatory (and non-discriminatory) reasons for your decisions.
3. Have all termination decisions reviewed before they are made.
4. Make clear what retaliation is and that it must be avoided.

Staying clear of retaliation claims by following the above action items will help your organization steer clear of the worst problems and have good defenses when there are problems.